

(27,705)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 355.

NORTH PACIFIC STEAMSHIP COMPANY, APPELLANT,

vs.

WILLIAM T. SOLEY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In the District Court of the United States in and for the Southern Division of the Northern District of California.

In Equity. No. 386.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Complainant,
vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA,
William T. Soley, and H. I. Mulcrevy, County Clerk of the City and County of San Francisco, and ex officio Clerk of the Superior Court of the State of California in and for the City and County of San Francisco, Defendants.

Bill of Complaint.

To the Honorable the Judges of the District Court of the United States in and for the Southern Division of the Northern District of California:

North Pacific Steamship Company, a corporation, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City and County of San Francisco, State of California, brings this its bill of complaint against the above named defendants and each of them:

And your complainant complains of said defendants and of each of them and says:

I.

That at all times herein mentioned your complainant was and it now is a corporation duly and regularly organized and existing under and by virtue of the laws of the State of California with its principal place of business in the City and County of San Francisco, in said State.

2

II.

That the above named defendant Industrial Accident Commission of the State of California, hereinafter called the "Commission" at all times herein mentioned was and it now is a public body, board or commission created by an act of the Legislature of the State of California and charged with and engaged in the administration of the Workmen's Compensation Insurance and Safety Act, Chapter 176 of the laws of 1913 of the State of California as amended by Chapters 531, 607 and 662 of the Laws of 1915, and hereinafter called the "Compensation Act."

III.

That the above named defendant, H. I. Mulerevy, at all times herein mentioned was and he now is the duly and regularly elected, qualified and acting County Clerk of the City and County of San Francisco, State of California, and the Ex Officio Clerk of the Superior Court of the State of California in and for said City and County.

IV.

That the above named defendant, William T. Soley is a citizen of the United States and a resident of the County of San Diego, State of California.

V.

That on and at all times herein mentioned, prior to the 16th day of June, complainant was engaged in the business of transportation of freight and passengers in interstate commerce between various points on the Pacific Coast in the State of California and in the states of Oregon and Washington and in the course of its said business at the said time, owned and operated the ocean going steamer "Breakwater."

VI.

That the matter in controversy herein exceeds, exclusive
3 of interest and costs, the sum or value of three thousand (3,000) dollars, to wit—the sum of three thousand fifteen and 35/100 (3,015.35) dollars.

VII.

That on or about the 12th day of June, 1916, at and in the harbor of San Diego, California, said steamer "Breakwater" was then there lying in navigable waters of the United States loading cargo and was at said time actually engaged in interstate commerce between a point in the state of California and a point in the state of Oregon; that at said time and in the course of his employment as stevedore on board of said steamer, while said steamer was lying within the navigable waters of the United States in the harbor of San Diego, State of California, said William T. Solely was injured by falling down a hatchway of said steamer "Breakwater" and sustained from said injury, a fracture of the cervical vertebræ.

VIII.

That thereafter on the 27th day of November, 1916, said William T. Soley filed an application for adjustment of claim hereinafter called "the application" before the said Commission for damages and for an award under the said Compensation Act, wherein it was stated and appeared that said William T. Soley at the time of his

alleged injury was engaged in the occupation of longshoreman as aforesaid. Said application was and is numbered 3464 in the records of said Commission.

IX.

That thereafter proceedings were duly and regularly had in the matter of said application of said William T. Soley for adjustment of claim, wherein complainant throughout protested and denied the jurisdiction of said Commission and alleged that the accident mentioned in said application and the injuries alleged to have resulted therefrom and any controversy arising out of or in connection therewith, were exclusively within the admiralty and maritime jurisdiction and cognizance of the Courts and laws of the United States and that said Commission had no jurisdiction to hear said application or to make an award thereon. Nevertheless, said Commission made and entered and filed its certain findings and award in the matter of said application under and by virtue of which, said Commission found among other things that said William T. Soley on the 12th day of June, 1916, while in the employ of your complainant as a longshoreman and in the performance of services growing out of and incidental to his said employment, sustained an injury, to wit: that said William T. Soley while placing hatch coverings on hatchways of the said steamer "Breakwater" accidentally fell into the hold of said steamer, thereby sustaining a fracture of the cervical vertebræ, and that at the time of said injury, said William T. Soley was subject to the jurisdiction of said Commission.

That thereupon said Commission made an award in the matter of said application to said William T. Soley as follows:

1. Cash in hand the sum of two hundred eighty-one dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of thirty dollars (\$30.00) to be deducted therefrom and paid to Herbert N. Ellis as his attorney's fee, as attorney for the applicant herein.

2. The further sum of eleven dollars and twenty five cents (\$11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment however not to exceed two hundred forty weeks.

3. Cash in hand the sum of five hundred fifteen dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows:

5	Agnew Sanitarium	\$149.85
	Dr. E. H. Crabtree	152.00
	Dr. Maynard C. Harding	203.50
	Dr. L. C. Kinney, for X-ray	10.00

That under and by virtue of said award your complainant has been ordered to pay to said William T. Soley the total sum of three thousand fifteen and 35/100 (3,015.35) dollars.

That no further order with respect to the sums of money required in and by said award to be paid by your complainant to said William T. Soley has been made by said Commission and that the award is now in full force and effect.

X.

Complainant further alleges:

(1) That the accident which caused the injury of said William T. Soley and which was the subject of his said application occurred while the said William T. Soley was engaged in the performance of a maritime contract of employment, to-wit, the employment of a stevedore or longshoreman while aboard the said vessel, "Breakwater" at a time when said vessel was afloat upon navigable waters of the United States of America and engaged in interstate commerce.

(2) That the said injury was and is under the Constitution and Laws of the United States exclusively within the admiralty and maritime jurisdiction of the Courts of the United States.

(3) That the said accident with its resulting injury was one with respect to which the Congress of the United States may establish and has established an exclusive rule of liability.

(4) That under and by virtue of the provisions of Section 86-C of said Compensation Act, said Compensation Act has no application to said accident and said injury; that said findings
6 and award are upon their fact null, void and of no effect whatsoever in law or in equity.

XI.

Your complainant further alleges that the said Compensation Act is unconstitutional for the reason that it violates and in so far as it violates the provisions of the 14th amendment to the Constitution of the United States:

(1) In that it denies to your complainant herein as employer of said William T. Soley, the equal protection of the laws, in that said compensation act does not afford an exclusive remedy, but leaves the complainant and its vessel subject to a suit in admiralty.

(2) In that it deprives your complainant of property without due process of law.

Your complainant further alleges that said Compensation Act is unconstitutional for the reason that it violates the provisions of Article III, Section 2, of the Constitution of the United States, conferring admiralty jurisdiction upon the Courts of the United States, and the provisions of Section- 24 and 256 of the Judicial Code.

XII.

Your complainant alleges:

(1) That said Commission had no jurisdiction to make, enter or file said award.

(2) That said award is upon its face, null, void and of no effect.

(3) That said award opposes a liability upon your complainant in violation of the Constitution of the United States and the laws of the United States passed pursuant thereto.

7

XIII.

That your complainant has exhausted all remedies allowed by said Compensation Act to prevent the enforcement of said award.

XIV.

That Section 26 of said Compensation Act provides that a certified copy of said Findings and Award may be filed with the Clerk of the Superior Court for any county or city and county and that judgment must be entered by the Clerk in conformity therewith immediately upon the filing of such findings and award and that execution may thereupon issue upon said judgment; that said William T. Soley has filed or caused to be filed a certified copy of said findings and award with said H. I. Mulcrevy as Clerk of the Superior Court of the State of California in and for the City and County of San Francisco, as aforesaid, and has caused and threatened to and will, unless restrained by this Honorable Court, from time to time, cause execution to be issued thereon, directed to the sheriff of the County of Alameda, State of California, commanding him to make the amount of said award, to-wit, the sum of three thousand fifteen and 35/100 (3,015.35) dollars, out of the property of your complainant; that your complainant has personal property in the said County of Alameda, State of California, subject to execution; that as complainant is informed and believes, the said William T. Soley is insolvent and will be unable to respond in damages in the premises; that unless the enforcement of the said award of said Commission and the levying of execution thereon is stayed by injunction in this proceeding, complainant will suffer irreparable damage, in this, that its property will be taken in satisfaction of said award without recourse on the part of complainant.

8

XV.

That your complainant has no plain, speedy, adequate or sufficient remedy or any remedy at all at law, and that relief against said award and said execution is obtainable only in a court of equity.

Wherefore, your complainant, to the end that it may obtain the relief to which it is justly entitled in the premises,—

(1) Prays the Court to grant to your complainant its writ of subpœna directed to the defendants above named commanding and requiring them and each of them to appear herein and answer under oath to the several allegations in this bill of complaint.

(2) Prays that the Court grant unto the complainant a writ of injunction pendente lite issuing out of and in accordance with the rules and practice of this Honorable Court, to be directed to the said defendants and each of them, restraining them, their servants, attorneys, employees and agents and all persons acting under their authority, direction or control to desist and refrain from taking any action whatsoever for the enforcement of said award and from having execution levied upon the property of complainant to satisfy said award, or to take any steps or action whatsoever toward the enforcement or levying of any execution heretofore issued upon said award; as also a restraining order to the same effect until an application for such injunction can be heard and that at the final hearing hereof such injunction may be made perpetual.

(3) Prays that upon the hearing of this suit and an adjudication therein the Court decree that the purported award so in form
9 made by the said defendant Industrial Accident Commission of the State of California, be adjudged to be null and void and of no effect.

(4) Prays that your complainant may have such other and further relief preliminary and final as to the Court may seem *mete* and proper and which equity may require and for its cost of suit herein incurred.

H. W. GLENSOR,
ERNEST CLEWE,
Solicitor- for Complainant.

10 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Chas. P. Doe, being first duly sworn, deposes and says: That he is an officer, to wit, the president of North Pacific Steamship Company, a corporation, the complainant named in the foregoing bill of complaint and that for that reason, he makes this verification for and on behalf of said North Pacific Steamship Company; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

CHAS. P. DOE.

Subscribed and sworn to before me this 18th day of December, 1917.

[SEAL.]

MARIE FOREMAN,
*Notary Public in and for the City and
County of San Francisco, State of California.*

Endorsed: Filed Dec. 18, 1917. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

11 (Title of Court and Cause.)

Answer of William T. Soley.

To the Honorable the Judges of the District Court of the United States in and for the Southern Division of the Northern District of California:

Comes now defendant William T. Soley and for answer to the bill of complainant herein admits, denies and alleges as follows:

I.

Defendant admits all the allegations contained in paragraph I of complainant's said bill.

II.

Defendant admits the allegations contained in paragraph II of said bill and further alleges on information and belief that the said Industrial Accident Commission of the State of California is a state court of competent jurisdiction over the subject matter and parties to this suit as appears from the record and judgment sought herein to be enjoined; that the decisions of said Industrial Accident Commission of the State of California have the same force of law as the decisions of other state courts therein.

III.

Defendant admits the allegations contained in paragraph III of complainant's said bill, and further answering said paragraph alleges that said H. I. Mulcrevy is merely a nominal defendant and in no wise a party in interest to the subject matter of this suit.

IV.

Admits that defendant William T. Soley is a citizen of the United States and a resident of the county of San Diego, state of California.

12

V.

Defendant has no knowledge or information sufficient to enable him to form a belief as to whether at the time alleged in paragraph

V of said bill complainant was engaged in interstate commerce and basing his denial on such lack of information denies that at said time complainant was engaged in interstate commerce.

VI.

Defendant denies that the value of the matter in controversy herein exclusive of interest and costs exceeds the sum of three thousand dollars; and alleges that the weekly indemnity of eleven and 25/100 dollars awarded to defendant from complainant under the terms of said award and judgment was contingent upon the continuance of defendant's total disability, as appears at the foot of page 4 of complainant's bill, and that at the time of the filing of complainant's bill herein defendant's said total disability had terminated and all of complainant's subsequent liability under the terms of said award of the Industrial Accident Commission of the State of California had ceased; that the total liability of complainant under said judgment sought herein to be enjoined does not and will not exceed exclusive of interest and costs the sum of thirteen hundred eighty-one and 60/100 dollars (\$1,381.60).

VII.

For answer to paragraph VII of said bill defendant alleges that none of the allegations contained in said paragraph VII of complainant's bill herein appear in the findings made by the Industrial Accident Commission of the State of California on which its said judgment is based except the allegation that on the 12th day of June, 1916, at San Diego, California, William T. Soley in the course of his employment as stevedore on board the steamer Breakwater was injured by falling down a hatchway of said steamer Breakwater and sustained from said injury a fracture of the cervical vertebrae; that no evidence in support of the further allegations interpolated by complainant in said paragraph VII was introduced by it
13 on its appearance in the proceedings had before said Commission upon defendant's application for indemnity; for lack of knowledge or information sufficient to enable him to form a belief defendant denies that complainant was at said time loading cargo or was at said time engaged in interstate commerce.

VIII.

Answering paragraph VIII of complainant's bill herein defendant denies that in the application for indemnity filed by William T. Soley before said Commission it was stated or appeared that said William T. Soley at the time of his alleged injury was engaged in the occupation of longshoreman "as aforesaid;" and alleges that said application filed by William T. Soley contains no allegation that at the time of the accident therein complained of the steamer Breakwater was then and there lying in the navigable waters of the United States loading cargo, or that at said time said steamer Breakwater

was engaged in interstate commerce; and that no evidence of such facts appear in the record of said application or in the proceedings had thereon before said Commission.

IX.

Defendant denies that complainant herein offered any competent evidence on which said Commission could make a finding on complainant's allegation that said Commission was without jurisdiction or that defendant's contract of employment was a maritime contract; and alleges that complainant negligently failed to assert and protect his alleged rights in that with full knowledge of said adverse findings and award of said Commission complainant failed and neglected to appeal from its said judgment by applying for a rehearing thereon within the time allowed by law; that by reason of said laches of complainant in failing to apply for said rehearing within the time fixed by law said award and judgment became final.

14 Defendant denies that under and by virtue of said award complainant has been ordered to pay to said William T. Soley the total sum of three thousand fifteen and 35/100 dollars or any other sum or amount in excess of thirteen hundred eighty-one and 60/100 dollars exclusive of interest and costs.

Defendant denies that no further order has been made by said Commission with respect to the sums of money required by said award to be paid by complainant to defendant and alleges that at the time of the filing of complainant's bill herein said Commission had made its order staying the issuance of execution on said judgment until the further order of said Commission.

X.

Defendant denies upon information and belief each and every allegation and conclusion contained in paragraph X of complainant's bill.

XI.

Defendant denies upon information and belief each and every allegation and conclusion contained in paragraph XI of complainant's bill.

XII.

Defendant denies upon information and belief each and every allegation and conclusion contained in paragraph XII of complainant's bill.

XIII.

Answering paragraph XIII of said bill defendant denies that complainant exhausted all or any remedy allowed by said Compensation

Act to prevent the enforcement of said judgment; and alleges the fact to be that complainant acquiesced in said judgment and permitted the same to become final by failing to apply for a rehearing thereon before said Commission and a review thereof by the appellate courts of the State of California at the time and in the manner specified and provided in said Compensation Act; that by his
15 said laches complainant has permitted the statute of limitations to bar him from the remedies provided in said Compensation Act.

XIV.

Defendant denies that he has caused or threatened or that he will cause or threaten execution to issue against the property of complainant in satisfaction of said award and judgment in any sum or amount greater than that of thirteen hundred eighty-one and 60/100 dollars exclusive of interest and costs.

XV.

Answering paragraph XV of said bill defendant alleges that under said Compensation Act complainant was provided with a plain, speedy, adequate and sufficient remedy at law and that he failed and neglected to pursue the same, as hereinbefore alleged in paragraph XIII hereof.

Further answering said bill defendant alleges that this court is without jurisdiction to try this cause in that defendant William T. Soley is the only defendant affected by proceedings herein or by any judgment that might hereafter be rendered; that said sole defendant in interest is a resident of the city and county of San Diego, State of California.

Wherefore, your defendant, William T. Soley, prays that this cause be transferred to the United States District Court for the Southern District of California, Southern Division, for trial; that complainant's bill herein be dismissed and that defendant have his costs.

HERBERT N. ELLIS,

Solicitor for Defendant, William T. Soley.

16 STATE OF CALIFORNIA,
County of San Diego, ss:

William T. Soley being by me first duly sworn, deposes and says: that he is one of the defendants in the above-entitled action; that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

WILLIAM T. SOLEY.

Subscribed and sworn to before me this 31st day of December, 1918.

[SEAL.]

E. R. BASKEWILLE,
*Notary Public in and for the County of
San Diego, State of California.*

(Title of Court and Cause.)

STATE OF CALIFORNIA,
County of San Diego, ss:

Herbert N. Ellis being first duly sworn deposes and says that he is attorney of record for defendant William T. Soley above named; that on the 31st day of December, 1918, he served the annexed answer on H. W. Glensor and Ernest Clewe, solicitors for complainant in the above-entitled action, by depositing a copy of said answer enclosed in a sealed envelope with postage paid thereon and directed to said solicitors at their office in the Mills Building in the city of San Francisco, state of California, in the postoffice at San Diego, California, on said date.

HERBERT N. ELLIS.

Subscribed and sworn to before me this 31st day of December, 1918.

[SEAL.]

AMANDA J. QUIST,
*Notary Public in and for the County
of San Diego, State of California.*

17 Endorsed: Filed Jan. 2, 1919. W. B. Maling, Clerk, by
J. A. Schaeffer, Deputy Clerk.

18 At a Stated Term, to wit, the November Term, A. D. 1919,
of the Southern Division of the United States District Court
for the Northern District of California, Second Division, Held at
the Court Room, in the City and County of San Francisco, on
Tuesday, the 3rd day of February, in the year of our Lord one
thousand nine hundred and twenty.

Present: The Honorable William C. Van Fleet, District Judge.

(Title of Cause.)

(*Order Dismissing Bill of Complaint and Order for Entry of
Decree.*)

This suit, heretofore tried and submitted, being now fully considered and the Court having rendered its oral opinion, it is ordered that the bill of complaint be and the same is hereby dismissed and that a decree be signed, filed and entered accordingly.

19

(Title of Cause.)

(Oral Opinion.)

(Rendered Feb. 3, 1920.)

The COURT (orally):

This action is one to enjoin the enforcement of an award made by the Industrial Accident Commission. The case is brought here because of involving a Federal question and alleging the jurisdictional amount in controversy to be such as to bring it within the right to have it heard in a Federal Court. This question as to the jurisdiction of the court gives rise to the only one that calls for consideration. I am satisfied from an examination of the evidence that the amount involved in the controversy is not sufficient to vest this court with jurisdiction. The award of the Commission is, so far as material here, after reciting the circumstances of the injury and the findings of the Commission thereon:

"Now, therefore, and in conformity with the foregoing findings, award is hereby made in favor of William T. Soley, the applicant herein, against North Pacific Steamship Company, the defendant herein, of a temporary total disability indemnity, and his medical expenses, payment thereof to said applicant to be as follows:

"1. Cash in hand the sum of two hundred eighty-one dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of thirty dollars (\$30.00) to be deducted therefrom and paid to Herbert N. Ellis, as his attorney's fee, as attorney for the applicant herein.

20 "2. The further sum of eleven dollars and twenty-five cents (\$11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment however not to exceed two hundred forty weeks.

"3. Cash in hand the sum of five hundred fifteen dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows:"—and then follows a statement of the items making up that sum.

The theory upon which the action proceeds, and the allegation is made that it involves a controversy amounting to \$3,000 independently of costs and interest, is that the award as to weekly indemnity would necessarily have been paid for the entire period of 240 weeks, whereas the award itself shows that it was purely tentative and uncertain in that respect, dependent upon the continued disability of the injured employee, and until "the further order of the Commission." The evidence at the trial showed that prior to the trial and

subsequently to the bringing of the action, the Commission had made a further finding and order declaring the disability of the injured employee terminated, and that no further allowance be paid to him. So that the total amount that he could receive under the final award was some \$1,370. Such being the facts I am satisfied that it does not disclose a case which under the Federal Statutes is authorized to be brought in the Federal Court.

It is urged that the potential effect of the award was to render the plaintiff here liable for the entire sum that would result by the payment of this weekly indemnity for 240 weeks. But that is not its effect. The plaintiff had the right under the state statute to itself have applied to the Board for the order which the latter subsequently made, apparently of its own motion, terminating the period of disability and the award; and it was bound to know or ascertain by appropriate steps for the purpose what the amount involved was before bringing the controversy here. It was not at liberty to assume under an award of that character that it would continue for the entire period indicated, which was thus framed to meet the provisions of the statute and was necessarily uncertain in duration of payment.

I am satisfied therefore that the jurisdictional amount in the controversy required to bring an action in this court did not and does not exist.

This conclusion renders it unnecessary to pass upon the other questions in the case. The order will be that judgment be entered dismissing the bill.

Endorsed: Oral Opinion rendered Feb. 3, 1920. Filed May 10, 1920. Walter B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

22

(Title of Court and Cause.)

(Decree in Equity.)

At a Stated Term, to-wit, the November Term, A. D. 1919, of the Southern Division of the United States District Court of the Northern District of California, Second Division, Held at the Courtroom, in the City and County of San Francisco, on Tuesday, the 3rd day of February, in the year of our Lord one thousand nine hundred and twenty.

Present: The Honorable William C. Van Fleet, District Judge.

The above entitled cause came on regularly for hearing on the 26th day of August, 1919. Plaintiff being represented by Messrs. Glensor, Clewe and Aiken, and defendant being represented by Messrs. Herbert N. Ellis and Henry Heidelberg, and the cause having been submitted to the above entitled court, and the said court having duly considered the same and being fully advised in the premises.

It Is Hereby Ordered, Adjudged and Decreed that the same be dismissed for want of jurisdiction by the above-entitled court, and judgment be rendered in favor of the defendant for his costs.

WM. C. VAN FLEET,

Judge of said Court.

Received copy of within Proposed Decree this 13th day of February, 1920.

ERNEST CLEWE,
AIKEN, GLENSOR & CLEWE,
*Counsellors for Petitioner Northern
Pacific S. S. Co.*

Endorsed: Filed and entered Feb. 17, 1920. W. B. Maling,
Clerk, By J. A. Schertzner, Deputy Clerk.

23

Statement on Appeal.

This cause came on for trial in the above entitled court, before the Honorable William C. Van Fleet, on the 26th day of August, 1919, upon the Bill of Complaint filed herein on the 18th day of December, 1917, and the Answer thereto of defendant William T. Soley.

Complainant thereupon offered and there was received in evidence as "Complainant's Exhibit I" the following document stipulated by the parties to be a true and correct copy of certain Findings and Award made by the Industrial Accident Commission of the State of California in favor of the defendant William T. Soley.

Before the Industrial Accident Commission of the State of
California.

Claim No. 3464.

24

WILLIAM T. SOLEY, Applicant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant.

Findings and Award.

This cause came on for decision by the Industrial Accident Commission of the State of California at its offices at 525 Market Street, San Francisco, California, on Friday, the 13th day of April, 1917, at 10 o'clock A. M.

Said decision was rendered upon testimony taken at a preliminary hearing held on Thursday, the 14th day of December, 1916, at 10 o'clock A. M., at the United States Post Office Building, at San Diego California, by Henry J. Bischoff, General Referee.

At said preliminary hearing said applicant was present and was represented by Herbert N. Ellis, Attorney at Law.

Evidence having been introduced by all of the parties upon all

of the issues and the cause submitted for decision, said Commission now makes its findings of fact and award as follows:

Findings of Fact.

1. That William T. Soley, applicant herein, was injured on the 12th day of June, 1916, at San Diego, California, while in the employment of defendant North Pacific Steamship Company, a corporation, as a longshoreman.

2. That said injury arose out of and in the course of said employment, was proximately caused thereby, and occurred while the injured employee was performing services growing out of and incidental thereto, in the following manner: While placing hatch coverings over hatchways of the Steamer "Breakwater" upon which he was at work, applicant accidentally fell into the hold of the vessel, thereby sustaining a fracture of the cervical vertebra.

3. That at the time of said injury said employee was subject to the jurisdiction of this Commission and was not engaged in any of the occupations or employments excluded by Section 14 of the Workman's Compensation, Insurance and Safety Act from the provisions of said Act; and that said injury was not caused by either the wilful misconduct or intoxication of the said employee.

4. That said defendant employer had actual knowledge of the sustaining of said injury within the time prescribed by law, that there was no intention by applicant to mislead or prejudice the employer by failure to give written notice and that he was not in fact misled or prejudiced thereby.

5. That the medical and surgical services required to cure and relieve said injured employee from the consequences of his said injury were not furnished by the defendant. That the defendant had sufficient opportunity to furnish such services at its own expense and neglected to do so. That applicant is therefore entitled to have paid the reasonable medical, surgical and hospital charges incurred on his behalf for services rendered to cure and relieve him from the consequences of his injury, the persons rendering such services and the amount of their respective reasonable charges being by this Commission determined and approved, as follows:

26	Agnew Sanitarium	\$149.85
	Dr. E. H. Crabtree.....	152.00
	Dr. Maynard C. Harding.....	203.50
	Dr. L. C. Kinney, for X-ray.....	10.00
	Total.....	\$515.35

6. That at the time of said injury the average annual earnings of the applicant herein were, pursuant to stipulation of the parties hereto Nine Hundred Dollars (\$900.00), and that the average weekly earnings were Seventeen Dollars and thirty-one cents

(\$17.31) and that sixty-five per cent thereof equals eleven dollars and twenty-five cents (\$11.25).

7. That by reason of said injury, applicant sustained a temporary total disability lasting from the 12th day of June, 1916, the duration whereof was not determinable at the time of the hearing in this case, and that compensation at the rate of Eleven Dollars and twenty-five cents (\$11.25) per week was due and payable to said applicant on account of said disability from the fifteenth day after he left work on account of his disability, or the further order of this Commission, and that such compensation accrued and payable up to and including the 18th day of December, 1916, a period of twenty-five weeks, equals the sum of Two Hundred Eighty-one dollars and twenty-five cents (\$281.25).

8. That Herbert N. Ellis has rendered services in this proceedings as attorney for the applicant, of the reasonable value of Thirty Dollars (\$30.00) payable by the applicant in said amount.

Award.

Now, Therefore, and in conformity with the foregoing Findings, Award is hereby made in favor of William T. Soley, the applicant herein, of a temporary total disability, indemnity, and his
27 medical expenses, payment thereof to said applicant to be as follows:

1. Cash in hand the sum of Two Hundred Eighty-one Dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of Thirty Dollars (\$30.00) to be deducted therefrom and paid to Herbert N. Ellis as his attorney's fee, as attorney for applicant herein.

2. The further sum of Eleven Dollars and twenty-five cents (\$11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment, however, not to exceed two hundred and forty weeks.

3. Cash in hand the sum of Five Hundred and Fifteen Dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows:

Agnew Sanitarium	\$149.85
Dr. E. H. Crabtree	152.00
Dr. Maynard C. Harding	203.50
Dr. L. C. Kinney, for X-ray	10.00

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.

A. J. PILLSBURY,
WILL J. FRENCH,

Commissioners.

[SEAL.]

Dated, San Francisco, California, this 18th day of April, 1917.

Attested:

H. L. WHITE,
Attorney.

28 Thereupon the defendant WILLIAM T. SOLEY, called as a witness on behalf of Complainant, testified:

"I am a longshoreman by occupation. I was a longshoreman during the month of June, 1916. I am the person named as the Applicant in the proceeding instituted in December, 1916, before the Industrial Accident Commission of the State of California, which is numbered 3464 in the records of said Commission.

At the time of the accident to me, for which the award was made, I was in the employ of the North Pacific Steamship Company as a longshoreman and was working on a vessel lying afloat at the Municipal Dock at San Diego, California. On the day of the accident I had been assisting in the loading and discharging of cargo from this vessel and was replacing the hatch coverings on the hatches of the vessel at the close of work, when I was injured. The vessel ran from San Diego to San Francisco; she had come into San Diego that morning."

On cross-examination the witness testified as follows:

"I was injured on the Steamer Breakwater. I received medical attention for a long time.

Q. When did he tell you that you were cured and could go back to work?

Mr. Clewe: I object to the question as immaterial, irrelevant and incompetent, and not within any of the issues of this case; furthermore, it is hearsay.

The Court: They may have a right to show the fact. It does not make any difference what my determination may be.

It will depend upon what my view of the law is. If my conclusion should happen to be against them, they want a record which will enable them to have the case reviewed.

Mr. Clewe: I simply want my objection in the record for the same reason.

The Court: The objection is overruled.

Mr. Clewe: Exception.

A. December 10, 1917.

Mr. Heidelberg:

Q. And did you return to work on or about that date?

Mr. Clewe: It may be understood that this line of objection applies to all these questions.

The Court: Yes.

29 Mr. Clewe: Exception.

"After my doctor told me I was cured I went back to work on or about December 10, 1917, and have been working ever since. I have made no claim on my employers since that time."

Thereupon the defendant offered in evidence a certain document. The Complainant objected to the admission thereof in evidence as follows:

Mr. Clewe: We object to the admission of that offer on the ground that it is immaterial, irrelevant and incompetent, that it relates to matter taking place after the institution of this action and therefore can in no wise effect the right of the complainant to bring the action or affect its right to relief at this time."

The objection was overruled, the ruling excepted to and the document was admitted in evidence by the court as defendant's "Exhibit A." Said document was in the words and figures following, to-wit:

Before the Industrial Accident Commission of the State of California.

Claim No. 3464.

Filed Aug. 25, 1919.

WILLIAM T. SOLEY, Applicant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant.

Order Terminating Disability Indemnity.

This cause came on for further hearing this 25th day of August, 1919, upon the petition of applicant above named for an order fixing the duration and extent of his disability, applicant appearing in person and by Herbert N. Ellis, attorney at law, and defendant appearing by Aitken, Glensor, Clewe & Van Dine, attorneys at law, and the cause having been submitted for decision, this Commission now finds that the disability suffered by applicant by reason of his injury on the 12th day of June, 1916, as heretofore found herein terminated on the 10th day of December, 1917, and that the disability indemnity accrued and payable to him therefor to and including said 10th day of December, 1917, amounts to the sum of eight hundred fifty-five dollars (\$855.00), which, together with the medical expenses heretofore awarded herein in the sum of five hundred fifteen dollars and thirty-five cents (\$515.35), makes a total of one thousand three hundred seven dollars and thirty-five cents (\$1,307.35), as the total liability of defendant above named to applicant by reason of said injury.

Dated at San Francisco, Calif., this 25th day of August, 1919.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.

A. J. PILLSBURY,

WILL J. FRENCH,

Commissioners.

Attest:

H. S. THOMAS,

Ass't Secretary.

L. C. B./D. B.

Thereupon it was stipulated between the parties:

1. That pursuant to the provisions of the Workman's Compensation Act of the State of California, the Findings and Award of the Industrial Accident Commission of the State of California, in favor of defendant Soley, a copy of which appears hereinabove as Complainant's Exhibit I, was filed in the office of the County Clerk of the City and County of San Francisco, State of California, 31 on June 4, 1917, and that a judgment of said Superior Court, based thereon, and in accordance therewith, was made and signed, and was recorded in Volume 118 of Judgments, at page 33 thereof, on the same day, in favor of said William T. Soley, and against said complainant.

2. That a Writ of Execution against the Complainant, directed to the Sheriff of the County of Alameda, State of California, was issued out of said Court on November 12, 1917, to satisfy said judgment of the said Superior Court, out of the property of the Complainant to the extent of the amount which had then accrued under said Findings and Award, but which was less than \$1,500.00.

3. That said Writ of Execution was returned entirely unsatisfied by said Sheriff on November 28, 1917.

4. That the Application of the defendant Soley for the termination of the Award made him by the Industrial Accident Commission and heretofore set forth as defendant's "Exhibit A" was filed with the Industrial Accident Commission on behalf of said Soley on August 20, 1919.

ALBERT S. HORNE, a witness called on behalf of the Complainant, testified as follows:

"In June, 1916, I was the auditor of the Complainant. I was familiar with the affairs of the complainant and with all its vessels. During June, 1916, and at the time of the injury to defendant Soley, the Steamer Breakwater was engaged in Interstate trade and commerce between ports on the Pacific Coast of the States of Washington, Oregon and California."

Thereupon it was stipulated between the parties that the Complainant herein, as the defendant in the proceedings before the Industrial Accident Commission, in which the said Findings and Award had been made in favor of the defendant Soley, had not pursued the statutory remedies provided in and by the Workman's

32 Compensation Act of the State of California for the purpose of appealing from said Findings and Award or of having the proceedings had before and by the said Industrial Accident Commission of the State of California, including said Findings and Award, reviewed by the Courts of the State of California.

Thereupon the case was submitted to the court for its decision.

Stipulation.

It is hereby stipulated by and between the respective parties hereto that the foregoing statement of the appeal is a full, true, complete and proper statement of the evidence given and received on the trial of this cause and that said foregoing statement of appeal may be allowed, settled and approved by the above entitled court as and for a full, true, complete and proper statement of the evidence given or presented on said trial.

Dated, San Francisco, April 14th, 1920.

HERBERT N. ELLIS,

HENRY HIEDELBERG,

Solicitors for Defendant, W. T. Soley.

ERNEST CLEWE,

AITKEN, GLENSOR, CLEWE &

VAN DINE,

Solicitors for Complainant.

Order Settling Statement on Appeal.

Pursuant to the foregoing stipulation and good cause appearing therefor;

It is hereby ordered that the foregoing statement on appeal. — and the same is, hereby settled, allowed and approved as a full, true, complete and proper statement of all the evidence given or offered on the trial of the above entitled cause.

Dated, San Francisco, April 17th, 1920.

WM. C. VAN FLEET,

United States District Judge.

33 Service and receipt of a copy of the within Statement on Appeal is hereby admitted this 24th day of March 1920.

HENRY HEIDELBERG,

HERBERT N. ELLIS,

Attorneys for Def'ts.

Endorsed: Filed Apr. 17, 1920. Walter B. Maling, Clerk.

34 *Certificate Setting Forth Jurisdictional Question.*

This cause came on to be heard upon the application for an injunction as prayed in the Bill of Complaint and for an order declaring null, void and of no effect the certain Award made by the Industrial Accident Commission of the State of California in behalf of the defendant William T. Soley.

The Bill of Complaint alleged that William T. Soley had received a personal injury while in the employ of Complainant under a maritime contract of employment exclusively within the admiralty and maritime jurisdiction of the Courts of the United States; that said injury was received by him while aboard a vessel belonging to the Complainant, which was then afloat upon navigable waters of the United States of America and engaged in Interstate Commerce.

The Bill alleged that the amount in controversy exceeded the sum of three thousand dollars, exclusive of interest and costs, to wit:

35 that it involved the sum of three thousand fifteen and 35/100 dollars (\$3,015.35), exclusive of interest and costs.

The defendant denied that the amount in issue exceeded the sum of three thousand dollars (\$3,000.00), exclusive of interest and costs.

Now therefore, it is hereby certified that the question of the jurisdiction of this Court upon the grounds heretofore stated, to wit: that the amount in controversy did not exceed the sum of three thousand dollars (\$3,000.00), exclusive of interest and costs, was the sole issue upon which the case was decided, I having found that the amount in issue did not exceed three thousand dollars (\$3,000.00), exclusive of interest and costs, it was the duty of the court to dismiss the appeal, which was accordingly taken; and I further certify that it is the only question of law upon the pleading and process for the decision of the Supreme Court of the United States; that the certificate was granted at the term in which the judgment in the case was entered.

Dated, San Francisco, February 27, 1920.

WM. C. VAN FLEET,
United States District Judge.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

36 *Petition for Appeal.*

North Pacific Steamship Company, a corporation, Complainant above named, conceiving itself aggrieved by the decree and order given, made and entered in the above entitled cause in the above entitled court on the 17th day of February, 1920, wherein and whereby it was ordered and decreed that the above entitled action be and the same was thereby dismissed for want of jurisdiction thereof, by the above entitled court, and that judgment be rendered in favor of defendant, William T. Soley, for his costs, amounting to the sum of \$—, does hereby appeal from said order and decree

of said court to the Supreme Court of the United States, and does hereby pray that this petition for said appeal and for leave to prosecute said appeal may be allowed and that a transcript of the record, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States; and now, at the time of filing this petition for
37 appeal, the said appellant files an assignment of errors, setting up separately and particularly each error asserted and intended to be urged in the Supreme Court of the United States.

And said petitioner further prays that an order may be made fixing the amount of the bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

ERNEST CLEWE,
AITKEN, GLENSOR, CLEWE &
VAN DINE,
Solicitors for said Complainant.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

38

Assignment of Errors.

Now comes North Pacific Steamship Company, a corporation, complainant herein, by its undersigned solicitors, and says:

That in the record, proceedings and decree given, made and entered in this cause on the 17th day of February, 1920, there is manifest error, and that said complainant has been denied its just rights by said order and decree entered by said District Court, and that said decree is erroneous and unjust to complainant, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz:

I.

Said District Court erred in making its order and decree on the 17th day of February, 1920, wherein and whereby it ordered, adjudged and decreed that this cause be dismissed for want of jurisdiction thereof by said District Court.

II.

Said District Court erred in giving and making its order and decree on the 17th day of February, 1920, wherein and whereby this cause was dismissed for want of jurisdiction thereof by the above entitled court.

39

III.

Said District Court erred in dismissing said action and in holding and deciding that the amount in issue in said action did not exceed, exclusive of interest and costs, the sum of \$3,000.00.

IV.

Said District Court erred in dismissing said action and in holding and deciding that the amount in issue in said action was less than the sum of \$3,000.00 exclusive of interest and costs.

V.

Said District Court erred in refusing to hold that complainant was entitled to the relief prayed for in its Bill of Complaint.

Wherefore, said complainant prays that the said decree may be reversed, and for such other relief as may be meet in the premises.

Dated, San Francisco, California, February 27, 1920.

ERNEST CLEWE,

AITKEN, GLENSOR, CLEWE & VAN DINE,

Solicitors for Complainant.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

40 *Order Allowing Appeal and Fixing Amount of Bond.*

Whereas, in the District Court of the United States in and for the Southern Division of the Northern District of California, on the 17th day of February, 1920, a decree was made and entered in the above entitled cause wherein and whereby it was ordered, adjudged and decreed that said cause be and the same was thereby dismissed and that the defendant, William T. Soley, have judgment for his costs; and,

Whereas, complainant herein, North Pacific Steamship Company, a corporation, has, on this 27th day of February, 1920, filed its petition for the allowance of an appeal from said decree to the Supreme Court of the United States, together with an assignment of errors in and by which said petition it has prayed that an order be made fixing the amount of the bond which it shall give and furnish upon said appeal;

Now, therefore, in consideration of the premises, and good cause appearing therefor, it is hereby ordered that said appeal be and the same is hereby permitted and allowed and that said appeal
41 may be prosecuted by said complainant;

It is further ordered that the said complainant shall file its undertaking and bond in form and substance conditioned, and with sureties in accordance with the provisions of law and the rules and practice of this court, in the sum of \$500, which said bond and sureties thereon shall be approved before filing and the said amount is hereby fixed as the amount of said bond, said bond to be approved by a judge of this court.

Dated, San Francisco, California, February 27th, 1920.

WM. C. VAN FLEET,
United States District Judge.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

42

Bond on Appeal.

Know All Men By These Presents: That the undersigned Fidelity and Deposit Co. of Maryland, a corporation, duly authorized to transact business in the State of California and duly qualified before the Department of Justice to execute bonds and undertakings in any and all Federal Courts of the United States of America, is held and firmly bound and indebted to William T. Soley, Appellee in the above cause, in the sum of five hundred dollars (\$500.00), to be paid to him and his successors and assigns, for which payment well and truly to be made the undersigned binds itself, and its successors, by these presents.

Whereas, lately at a session of the District Court of the United States for the Northern District of California, Southern Division, in a suit pending in said Court between North Pacific Steamship Company, a corporation, complainant, and William T. Soley, defendant, a decree was rendered against said complainant dismissing its said action, and the said Complainant having obtained from said court its Order allowing it to appeal to the Supreme Court of the United States in the aforesaid suit, and a Citation directed to the said defendant William T. Soley citing and admonishing him to be and appear before the Supreme Court of the United States, at the City of Washington, in the District of Columbia, on the 12th day of June, 1920.

Now the condition of the above obligation is such that if the said Complainant shall prosecute this appeal to effect and answer all damages and costs that may be awarded against it if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and effect.

In Witness Whereof, Fidelity and Deposit Co. of Maryland, a corporation, has hereunto caused its corporate name to be signed and attested and its corporate seal to be affixed by its duly authorized officers at San Francisco, California, this 17th day of April, 1920.

FIDELITY AND DEPOSIT CO OF
MARYLAND,

[SEAL.]

By EDWIN C. PORTER,
Attorney-in-Fact.

The foregoing Bond is hereby approved this 17th day of April, 1920.

WM. C. VAN FLEET,
United States District Judge.

Endorsed: Filed Apr. 17, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

44 (Title of Court and Cause.)

Præcipe for Transcript of Record.

The Clerk of the above entitled Court will please prepare a Transcript of the Record for the Appellate Court in the above entitled cause, and is hereby directed to insert therein the following:

1. The Bill of Complaint, filed in the above entitled Court, on the eighteenth day of December, 1917.

2. The Answer of the above named defendant William T. Soley to said Bill of Complaint.

3. The Order given and made by the District Court of the United States, in and for the Southern Division of the Northern District of California, on the third day of February, 1920, ordering a Judgment dismissing said Bill of Complaint.

4. The Opinion rendered by the Judge of said District Court, the Honorable William C. Van Fleet, on February 3, 1920, on the making of said last mentioned Order.

5. The Judgment and Decree of said Court given, made and entered on the 17th day of February, 1920.

6. All papers filed by Complainant herein in the prosecution of its Appeal, including the Petition for Allowance of Appeal; Assignment of Errors; Order Allowing Appeal and Fixing the Amount of Bond; Certificate setting forth Jurisdictional Question; Statement of Appeal; Citation on Appeal; Appeal Bond and the approval of the same, and Præcipe for Transcript of Record.

Dated, San Francisco, California, April 17th, 1920.

AIKEN, GLENSOR, CLEWE & VAN DINE,
ERNEST CLEWE,
Solicitors for Complainant.

45 Receipt of a copy of the within Præcipe is hereby admitted this 17th day of April, 1920.

HERBERT N. ELLIS,
HENRY HEIDELBERG,
Att'ys for Def'ts.

Endorsed: Filed Apr. 17, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

46 In the Southern Division of the United States District Court
in and for the Northern District of California, Second Di-
vision.

No. 386. Equity.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Complainant,
vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA,
et al., Defendants.

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing forty-five (45) pages, numbered from 1 to 45, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the præcipe for transcript of record, as the same remain on file and of record in the above entitled cause, and that the same constitute the record on appeal to the Supreme Court of the United States.

I further certify that the cost of the foregoing transcript of record is \$19.10; that said amount was paid by the attorneys for complainant; and that the original citation issued herein is hereunto annexed.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 15th day of May, A. D. 1920.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk United States District Court, Northern
District of California.*

47 In the District Court of the United States in and for the
Southern Division of the Northern District of California.

No. 386. Equity.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Complainant,
vs.

INDUSTRIAL ACCIDENT COMMISSION OF STATE OF CALIFORNIA,
WILLIAM T. SOLEY, et al., Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to William T. Soley,
one of the defendants in the above entitled action, Greeting:

You are hereby cited and admonished to be and appear before the
Supreme Court of the United States, at the City of Washington, in

the District of Columbia, on the 12th day of June, 1920, being within sixty days from date hereof, pursuant to an order allowing an appeal filed in the Clerk's office of the District Court of the United States, in and for the Southern Division of the Northern District of California, wherein the Complainant herein North Pacific Steamship Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against said appellant, as in said order allowing said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William C. Van Fleet, United States District Judge for the Northern District of California, Southern Division, on this 17th day of April, 1920.

WM. C. VAN FLEET,
United States District Judge.

Service and receipt of a copy of the within citation on appeal is hereby admitted this 19th day of April, 1920.

HENRY HEIDELBERG,
Attorney for ———.

[Endorsed:] No. 386. Equity. In the Southern Division of the United States District Court for the Northern District of California, Second Division. North Pacific Steamship Company, a corporation, Complainant, vs. Industrial Accident Commission of State of California et al., Defendants. Citation on Appeal. Filed Apr. 19, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk. Aitken, Glensor, Clewe & Van Dine, Attorneys for Complainant, Mills Building, telephone Douglas 2691, San Francisco.

Endorsed on cover: File No. 27,705. N. California D. C. U. S. Term No. 355. North Pacific Steamship Company, appellant, vs. William T. Soley. Filed May 21st, 1920. File No. 27,705.